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ABSTRACT

Focusing on the processes involved in making formal bureaucracies responsive, the study examined: the structure of formal grievance and redress procedures within the criminal justice system in San Jose, California; and the informal strategies used by politically active members of the Chicano community to extend and strengthen these channels. The primary channel for complaints against individual police officers was a two-man Internal Affairs Investigative Unit within the police department. However, claiming that their work involved confidential personnel matters, the department refused to release any information on how many complaints were received or how they were resolved. Two years ago, in response to continuing pressure, the municipal government hired an ombudsman to serve as an advocate/investigator for citizens with grievances against any city agency. However, his effectiveness was doubtful. Although there were several channels of informal support for grievances, the most these groups did was provide moral support and skills in filing a complaint through the Internal Affairs unit. The Chicano community had three possible strategies for maximizing their influence on the grievance and redress procedures: to strengthen the existing avenues for registering grievances and obtaining redress; to utilize legal strategies for making the agencies responsive to community needs through individual and class action lawsuits; and to use community political influence and pressure to redefine police policies. Of these, political strategies appeared the more promising. (NQ)

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GRIEVANCE AND REDRESS: CHICANO ACCESS TO THE CRIMINAL JUSTICE SYSTEM

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This paper deals with the structure of formal grievance and redress procedures within the criminal justice system in San Jose, California, and the informal strategies being used by politically active members of the Chicano community to extend and strengthen these channels. My emphasis is not so much on individual complaints but on the processes involved in making formal bureaucracies responsive to community evaluation. Through micro-analysis of police complaint procedures and an ethnohistorical approach to the political strategies used in San Jose, I hope to be able to draw some general conclusions about the relationships between bureaucratic administration of justice organizations and the ethnic minority group clients they are expected to serve.

My investigations have revealed that most complaints from citizens are about the excessive use of force during arrests. Informants reported being beaten for no apparent reason, being sprayed in the face with Mace, and being constrained with extremely tight handcuffs. Others complained of harassment, being stopped and searched for no reason, being subjected to abusive or threatening language, and being continually stopped by the same officer. A few informants complained of their houses being entered without permission or warrant and being threatened with arrest if they complained about such treatment. My investigations have been corroborated by a much larger study carried out in San Francisco, the Northern California Police Practices Project.[1] The director of this ongoing investigation adds a fourth category to the excessive use of force, harassment and illegal house entry--the misuse of firearms. Firearms misuse has been an issue in San Jose as a result of several accidental or questionable killings, and has been a major subject in both a San Jose City report and a report by the Santa Clara County Human Relations Commission.[2]

The primary channel for complaints against individual police officers is a two man Internal Affairs Investigative Unit within the San Jose Police Department. Claiming that their work involves confidential personnel matters, the department refuses to release any information on how many complaints are received, or how they are resolved. Community informants stated that the Internal Affairs Unit may not keep such records since they normally notify complainants by telephone that their complaints have been investigated and found to be groundless. In some cases if the complaint is

substantiated, an officer might be reprimanded, but the department has not made public its policy on how such reprimands may affect an officer's progress within the department. Informal procedures often make it difficult to utilize the Internal Affairs Unit. Informants reported being sent to several different offices within the police administration building with no one seeming to know where complaints could be filed. Police staff were reported as generally uncooperative and threatening to complainants.

Dissatisfaction over the available procedure makes many citizens reluctant to complain. Informants stated that they didn't think it would do them any good to complain, in fact it might affect them adversely. If the officer they complained about learned of the complaint, he would be likely to harass them and abuse his authority even further. This fear also makes it difficult to find witnesses who will support a complainant. Many people I talked to felt that the Internal Affairs Unit was primarily to protect the policemen rather than to protect citizen rights. Numerous attempts have been made by Model Cities, the Human Relations Commission and community groups to establish some sort of citizen influence over the complaint process, but all such attempts have been effectively blocked by the police department.

Two years ago, in response to continuing pressure, the municipal government created a position of ombudsman to serve as an advocate/ investigator for citizens who have grievances against any city agency. The office receives three to five complaints a week and over 90 percent are directed against the police department. The Ombudsman does not keep precise records as to what kinds of complaints are received and how they are resolved. The Ombudsman forwards complaints to the Internal Affairs Unit for investigation, and occasionally conducts his own investigations with a limited staff. While the Ombudsman is more accessible to the community, because he is Chicano and is independent of the Police Department, his effectiveness is doubtful. The police department is reluctant to cooperate with him, and tend to view him as an adversary. Due to several differences about the resolution of complaints, the Ombudsman was able to institute a procedure whereby he could challenge the findings of the Internal Affairs Unit in a hearing with the Chief of Police before the City Manager. However, the Ombudsman would not tell me how many times he

has utilized this procedure. An informant from the police department said he was not aware that this procedure had ever been used. The Ombudsman was not well known among people I interviewed and those who had heard of the office did not think he would be much more effective than if they went through the normal Internal Affairs procedure. If the Ombudsman did have a major impact on the problem of community access to the police department, I believe he would be more willing to make public his caseload and the kinds of redress achieved. Instead I found him to be very sensitive to the "threat" of an outsider having access to any information about how his office operated.

In addition to municipal channels for grievances, citizens can instigate lawsuits against individual police officers. This procedure puts a tremendous burden on the citizen in terms of money, time, and the requirement that he virtually conduct the investigation on his own. The Public Defender is reluctant to accept lawsuits against the police because they are very difficult to win. The San Jose chapter of the National Lawyer's Guild and the American Civil Liberties Union sometimes become involved in suits against the police, but both groups have limited resources. For poor Chicanos legal redress is beyond their resources as a channel for complaints.

There are several channels of informal support for grievances but the most that these groups can do is provide moral support and skills in filing a complaint through the Internal Affairs unit. The American Civil Liberties Union has a police complaint committee of volunteers who investigate complaints and help citizens fill out the necessary papers for the police department. The Humanitarian Coalition is a group of college students who provide a similar service in addition to gathering information about kinds of complaints. The Community Alert Patrol, a recently disbanded citizen's group which observed police behavior for the past four years, has also documented police abuse of authority. None of these groups has any formal power, but they all have some ability to muster community support and attention if redress is not forthcoming. Recently a coalition of community groups interested in police problems has developed a plan to pool information of complaints against particular officers in hopes of being able to challenge the personnel policies of the department. This strategy was tried in San Francisco by the Police Practices Project, but abuses were pervasive throughout the department and no officers could be isolated as "bad apples."

The difficulty with existing grievance procedures is that community discontent is channeled into bureaucratic agencies which are more concerned with protecting their own images than in protecting the rights of citizens. The volunteer groups are more responsive to citizen needs, but they have virtually no influence in the grievance procedures which are established. There appears to be a lack of committment to provide resources or power for an agency which might be more responsive, particularly since the Police Department actively opposes any "outside" interference in what the administrators define as personnel matters.

The Chicano community has three possible strategies for maximizing their influence on the grievance and redress procedures: the first is to strengthen the existing avenues for registering grievances and obtaining redress, the second is to utilize legal strategies for making the agencies responsive to community needs through individual and class action lawsuits, and the third is to use community political influence and pressure to redefine police policies.

In terms of the first strategy, the Ombudsman's office could be strengthened by allocating more resources for publicity and investigation, and by utilizing the procedure for challenging the findings of the Internal Affairs investigations. Also, attempts could be made to extend the Ombudsman's jurisdiction to all municipal agencies--a power which is theoretically his but is rarely exercised. Most of the other criminal justice agencies are at the county level, so another extension of existing channels could be to develop a position of Ombudsman for county agencies, including the Sheriff's Department, County Jail, Public Defender, and Probation Department. Only the Sheriff's Department has any channel for complaints. Complaints against employees of any of the other agencies must go to their supervisors. However, as long as the complaint channels remain internal to the agencies being complained about, it is unlikely that citizen needs will be met and citizen rights protected.

A second strategy is to utilize legal redress. Suits have been filed on behalf of individual and groups of individuals to improve jail conditions in Santa Clara County and to make more representative the ethnic composition of the County Sheriff's department. Although no change can come about directly from a suit, since the courts have no way to enforce their decisions,

the publicity and public attention surrounding a suit can generate enough political pressure for the administration of justice bureaucracies to respond and implement changes suggested by community leaders. The difficulties of this strategy are twofold: first to find the resources for supporting a suit, and then to organize sufficient community support so that the administrators will initiate changes in the agencies under their supervision. In Santa Clara County the legal strategies have been effective through a coalition of concerned Anglos who have access to the legal resources and Chicano community leaders who lend their support in influencing local government.

The third alternative is to employ political pressure to the legal government representatives such as supervisors of the city council to change or make more explicity the policies and procedures of the administration of justice agencies. Employees of all the agencies have a great deal of discretion in dealing with clients, and there is a lot of room for informal and discriminatory practices. The discretion of police officers has been the subject of an entire body of literature, with most recommendations in the direction of more supervision of police activity.[3] According to law professor Anthony Amsterdam, "It is likely that police administrators themselves would resolve the issues in a fashion more considerate of individual rights, when designing rules of general application posted for public scrutiny, than do individual policemen in the unguided, invisible and adrenalin stimulated treatment of individual citizens."[4]

If the police refuse to strengthen their own regulations, community pressure can also be applied to establish citizen input to the policy determination process. The AdHoc Committee on the Policies and Procedures of the Police Department in 1972 recommended that a citizens committee be instituted as an adjunct of the Ombudsman's office to deal with the issue of policy, and the Santa Clara County Human Relations Commission in 1973 recommended that each police agency in the county have a police advisory committee made up of at least 55% citizens, as well as independent and public investigations of cases where police personnel cause a civilian fatality. The first recommendation was accepted but not the second. Every proposal for direct civilian advice to the Police Department has been

actively opposed and defeated so far.

Of these three strategies for encouraging change within administration of justice bureaucracies, political strategies appear to be more promising than either institutional or legal. The office of the Ombudsman is a major step for institutionalizing citizen advocacy, but it may take a considerable amount of time for the rest of the municipal government to accept the role of citizen advocate so that it can be effective. Avenues of legal redress are being restricted as it becomes more and more difficult to initiate class action lawsuits. Individual lawsuits cannot deal with the basic institutional problem of police abuse of discretionary power. It is also extremely difficult to locate independent witnesses, obtain the money for supporting the case, etc. Some political strategies have been unsuccessful, such as repeated attempts to get a citizen's review board, and some have been more successful such as citizen observation and patrol groups. Attempts to encourage other area police departments to alter policy have appealed to internal interests such as efficiency or economy, or to professional interests, but these strategies have not yet been attempted in San Jose.

The issue of public accountability of police policy is a relatively new strategy which has been suggested by the Police Practices Project. Project priorities include: visibility and accountability of police policy and rules, and substantive restrictions on police behavior in the areas of use and display of firearms and other means of force, treatment of arrestees, search and seizure tactics, enforcement of vice and victimless crime statutes, and the manner in which domestic and neighborhood disputes are approached and settled. If police departments are to be publicly accountable, they must make policies in all these areas which can be discussed publicly. This is a way of creating a yardstick by which to measure the appropriateness of discretionary policy making by the officer in the field.

Another area of public accountability is the recruitment of minority ethnic group officers to patrol in areas of high minority concentration. Although San Jose does employ some Mexican American and Black officers, they are often not assigned to the poorer sections of the city where most of the Mexican Americans and Blacks live. This is because those beats are

where the "action" is, and where reputations can be made. Consequently, officers with the most seniority can request those beats and continue to serve as an occupying force in ethnically different neighborhoods.

Recently fourteen Chicanos were accepted as police recruits and trained in the police academy. However, nine of the fourteen were dismissed during their probationary period. Committment of adequate representation of ethnic minority group members may have to include more effective training procedures, and a restructuring of patrol assignment priorities. Although the formal committment to hiring minority officers was made, in this case it appears that informally that committment was not taken seriously.

In dealing with a bureaucratic agency, the discrepancies between formal and informal procedures become apparent. Certainly the institution of formal procedures and policies will not solve the problem entirely, since even the most rigid rules can be ignored or circumvented. However, it is vital to work on formal rules and policies whenever possible, since it is the nature of bureaucracies to maintain formal procedures. The office of the Ombudsman certainly has the potential to become effective, and that potential is more valuable than simply trying to informally convince police officers that they should not discriminate against Mexican Americans. In a previous study it was argued that formalized political power was the only way to alleviate Chicano grievances against the police department.[5] Strategies such as the institutionalization of grievance procedures and the public accountability of police procedures and policy will not magically solve the problems of police-community hostility, but they hold more promise than more informal strategies which produce ultimately unenforceable policies.

If the Chicano community is to be considered by police department policymakers, strategies which maximize citizen input to the policy process must be pursued. Chicanos need to recruit political support in their own community and among sympathetic Anglos in order to break down the insulation and encapsulation of the police department.

These events can be analyzed in terms of game theory--rival political structures which utilize available resources to compete for influence and power.[6] Politically active Chicanos form a political structure which challenges the policies and procedures of the Anglo dominated municipal

government. Strategies include both formal legal means and informal community pressure, using the law, informal pressure from politically active citizens and publicity as resources in the contest. In the case of the suit against the police department, Chicanos will have to prove that while complying formally with the Chicano initiated change in hiring policies the police department tried to informally undermine the minority recruitment program. The arena for the competition is primarily the courts, but also the police department and academy, as Chicanos try to get information and influence over the procedures and policies of the department.

The police department is most vulnerable to community pressure through the office of the Chief, since it is he who must lobby with the City Council for funds and can control policy within the department. Yet other areas are also important, particularly because they are beyond direct public accountability. The low levels of command, as was pointed out before, is composed of officers who may be above average in their hostility toward the Chicano community. It is these men who form the core of the Police Officer's Association which has filed its own suit to halt the minority recruitment program on the grounds that it discriminates against better qualified white candidates. The community has to be able to obtain more information about how the police department operates internally in order to discover which roles are most vulnerable to community influence and which strategies will be most effective in formalizing that influence.

This creates an ethical problem for anthropological analysis in that the anthropologist who points out effective strategies and analyzes the points in a political structure which are most vulnerable to change may be contributing to further that change. Yet any information may have political potential, and we seem to be moving toward an era where the bias of the observer is accepted as an integral part of the study. Let it suffice to say that my sympathies lie with the establishment of formal grievance and redress procedures, as a way of combating informal ethnic discrimination against groups which are politically less powerful than the Anglo majority.

1. The Northern California Police Practices Project is funded jointly by Mexican American Legal Defense Fund, American Civil Liberties Union and National Association for Advancement of Colored People Legal Defense Fund.

2. Final Report of the AdHoc Committee on the Policies and Procedures of the Police Department of the City of San Jose, May 18, 1972.

   Santa Clara County Human Relations Commission, Report of the Ralph Terry Public Hearings held August 9-24, 1973.

3. See for example K. C. Davis Discretionary Justice - A Preliminary Inquiry. University of Illinois Press 1971.

4. Amsterdam, "The Supreme Court and the Rights of Suspects in Criminal Cases," 45 New York University Law Review 785,812 (1970).

5. N. Geilhufe. Ethnic Relations in San Jose: A Study of Policy-Community Interaction. Unpublished PhD dissertation, Stanford University 1972.

6. F. G. Bailey. Strategems and Spoils. NY:Schocker 1969.